Discussion Paper

Amendments to the *Condominium Act*

October 1990

Province of British Columbia

Ministry of Finance and Corporate Relations

91-01155/

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Foreword

This paper discusses proposed changes to the *Condominium Act*. These proposals complement planned changes to both the *Real Estate Act* and the *Mortgage Brokers Act*. Together, these initiatives reflect a commitment on the part of this government to update and modernize real estate legislation in the province.

Revision of the real estate legislation is part of a broader process of revising and reforming legislation related to the corporate and financial sectors. Recent initiatives include the *Financial Institutions Act*, the *Credit Union Incorporation Act* and the *Personal Property Security Act*. A major review of the *Company Act* is also underway.

Comments will be accepted at any time but, in order to have the greatest chance of influencing government policy, it is recommended that comments be provided by January 31, 1990, to:

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Summary of Amendment Proposals

This paper proposes a number of changes to the *Condominium Act*. While the act is fundamentally sound, changes are required to ensure that the act continues to provide a solid basis for condominium operations.

The challenge is to provide a balance between the interests of developers and purchasers of condominiums and a balance between the interests of individual owners and the strata corporation which the owners are members of. The discussion paper proposals improve this balance without changing the basic policy underlying the legislation. Proposals include the following:

- changes which increase the flexibility of strata corporations to manage their own affairs. These include:
  - changes to the rules governing the rental of strata units which balance the concerns of strata corporations, owners and tenants more effectively;
  - changes to the ongoing operations of strata corporations which should make them more effective and accountable; and
  - changes to the rules governing strata plan reorganizations which will enable strata plans to be more easily amended.
- changes which reduce the government's direct intervention in the development and ongoing operations of condominium complexes and remove non-essential barriers to condominium development;
- improvements to the arbitration system which better ensure that the rights of individual owners are protected;
- changes to the duties of condominium developers which improve their relationship with both municipal authorities and new strata councils and should facilitate the development of strata properties; and
- new disclosure and public information rules which improve the relationship between developers and subsequent owners and increase peoples' awareness of their rights and responsibilities under the act.

Additionally, the paper proposes that the act be re-drafted to be more understandable. This is particularly important for the *Condominium Act* because it is used extensively by the general public.

Amendments to the Condominium Act

Introduction

The *Condominium Act* is a major piece of legislation which affects a significant number of British Columbians. It was enacted in 1974 and revised substantially in 1977. It is recognized as one of the most progressive and complete condominium statutes in Canada and has succeeded in making condominium living accessible to British Columbians. Since passage of the act, condominiums have become an increasingly important part of our housing stock, both as a means of home ownership and as rental units.

While the act provides a fundamentally sound basis for condominium operations, periodic review is necessary to ensure that the act meets the needs of the housing market. The purpose of this paper is to propose a number of changes to improve the act without changing the basic policy underlying the legislation.

In addition, following the recommendation of the 1988 report of the Justice Reform Commission, "Access to Justice," those provisions of the legislation most used by the general public will be re-drafted to be more understandable. This is particularly important for the *Condominium Act*, when one considers all the people who use the act to determine their rights and responsibilities as developers, owners, and strata corporation members.

The changes proposed in this paper reflect a number of basic principles. These include:

- the need for flexibility in condominium operations;
- the need to appropriately balance the interests of developers, owners and strata corporations; and
- the need to ensure that information about the rules governing condominium operations is readily available to all interested parties.

Flexibility

Strata corporations must have the flexibility to manage their own affairs as they see best. Given the diversity of types of condominiums, the legislation cannot anticipate all the situations that may arise. Inflexible statutory standards could hinder a strata corporation's ability to adapt to change. The paper proposes a number of amendments to the act which will increase the flexibility of strata corporations.

Balance

Condominium ownership means ownership of a unit and of a share of the common property. It is inevitable that the common interest and that of individual owners will conflict at times.

The act currently balances the responsibility of the strata corporation to manage common affairs with the rights of individual strata lot owners to enjoy their property as they wish. That balance must be maintained in the face of increased corporate flexibility. This paper contains proposals which will ensure that the interests of individual strata owners and those of the strata corporation are appropriately balanced.

Similarly, the relationship between condominium developers and strata corporations must be balanced. The act should facilitate a smooth transfer of management responsibilities from the developer to the new strata corporation. It should also ensure that neither of the parties is operating at a disadvantage, should conflicts arise. This paper contains proposals which will better balance the interests of developers and strata corporations.

Availability of Information

Finally, it is critical that developers, strata corporations and owners all be aware of their rights and responsibilities under the act. Clarification of the act itself will be a useful step in this direction. Additionally, this paper contains disclosure and public information proposals that will make it easier for people to get the information they need.

Transition

The proposals contained in this paper are structured to minimize the impact of any change on existing condominiums. Many of the proposals are discretionary—they enable the strata corporation to change its method of operation, *if it chooses*. The proposals that involve changes to existing operations do not alter the basic rights of condominium owners and are intended to minimize any disruption.

Fundamental Rights

Condominium owners have certain fundamental rights which cannot be changed once the strata corporation is established. These include the unit entitlement and destruction value attributed to each strata unit and the voting rights of each strata owner. Currently, these are protected by the act and by the role of the Superintendent of Financial Institutions (Superintendent) in vetting and approving the schedules which set out these rights.

The following proposals would alter this approach by lessening the role of the Superintendent and placing greater reliance upon statutory provisions.

Unit Entitlements

The unit entitlement is the share of common property attributed to each individual strata owner. It is used as the basis for determining each owner's share of common expenses, as well as for property assessment and taxation purposes. Currently, unit entitlements are subject to Superintendent's approval and are generally calculated on a square footage basis set out in section 1 of the act. Unit entitlement is set in the strata plan and cannot be changed once the plan is filed.

The act requires common expenses to be allocated in accordance with unit entitlement. Generally, that results in a fair allocation of common expenses. However, there are cases where this does not hold—for example, where the condominium complex is composed of different types of units or where different units have different access to common property.

To address this problem, it is proposed that strata corporations be given the authority to alter the basis upon which common expenses are levied (i.e., to use a basis other than unit entitlement).

The unit entitlement, itself, could not be changed from that set out in the strata plan and would remain the basis for taxation of common property.

Change to the allocation of expenses would require approval of three-quarters of the strata owners and any change from the unit entitlement standard would be subject to arbitration in order to protect individual owners. Disclosure rules would be

improved to ensure that prospective owners are adequately informed.

While the act would enable strata corporations to adopt whatever basis was most appropriate to their particular circumstance, it is anticipated that in the majority of cases, expenses will continue to reflect unit entitlement.

It is also proposed that the requirement that the Superintendent approve unit entitlements be eliminated, and that the existing square footage basis for unit entitlement be set out in the act as the general standard for residential condominiums.

Developers would be allowed to deviate from this standard only where the condominium complex is composed of different types of units or has a commercial component.

To ensure that any deviation from the standard unit entitlement is not oppressive to individual owners, it is also proposed that unit entitlement be subject to arbitration.

The potential for arbitration, combined with market forces, should provide adequate incentive for developers to establish reasonable unit entitlements.

Destruction Value

Destruction value is the basis for each individual owner's share in the insurance proceeds upon destruction of the condominium complex. Currently, under section 4(g) of the act, destruction values are calculated to reflect the proportional value of each unit to the value of the complex as a whole at the time the strata plan is initially filed. A schedule of destruction values must be filed along with the strata plan and is subject to Superintendent's approval.

Concerns have been raised that because units may appreciate at different rates, the initial value of any given unit may not reflect its relative value at the time the complex is destroyed. Consequently, destruction values based on initial values can be inequitable.

It is proposed that destruction values be calculated upon destruction of the complex from the most current assessed value as prepared by the British Columbia Assessment Authority.

This rule would apply to all types of condominium complexes, including phased stratas. It would apply to existing condominiums, as well as those built after the act is amended.

The impact of this change on owners of existing condominiums will be minimal, as the value is relevant only if the complex is destroyed. However, a transition provision will be considered to ensure that existing insurance coverage does not become inappropriate as a result of this change to destruction values. With the establishment of this general rule, Superintendent's approval of destruction values should no longer be required.

Voting Rights

Currently, section 72 of the act provides that each unit in a residential complex has one vote in the decisions of the strata corporation. In mixed residential-commercial complexes, the Superintendent may approve alternate voting rules.

Concerns have been raised that the one unit/one vote rule gives undue influence to developers and "investment owners." An investment owner may own several units in one complex and, therefore, have several votes. On the other hand, owners who have bought units as residences will have only one vote. As decisions of the strata corporation often affect the quality of life of the residents, it has been argued that voting rights should not depend upon the amount of property owned. Complaints tend to be directed at absentee owners and at developers who retain ownership of a number of units in a strata complex they have developed.

On the other hand, the one unit/one vote rule is consistent with the well-accepted principle that the greater the investment in a corporation, the greater should be the investor's vote. "One share, one vote" has long been a standard of corporate democracy. Altering the rule could discourage investment at a time when condominiums are becoming an important source of rental housing.

Additionally, the act provides balance by giving owners access to arbitration to prevent actions by the corporation being oppressive to the individual. Proposed changes to the arbitration system discussed below should increase access to arbitration.

While it is not proposed that the one unit/one vote rule be changed, other changes can be made to strengthen voting rights.

It is proposed that the voting procedure for special resolutions be altered. The act would enable a second confirming vote on a special resolution upon application of 5 per cent of the owners. Special resolutions could not be acted upon for some period, perhaps 14 days, to allow a confirming vote to be requested.

This will help to address concerns that all owners be informed and have the opportunity to participate in significant decisions.

To facilitate fuller participation in strata corporation activities, it is also proposed that the act enable spouses of owners to exercise the owners' vote and rights of council membership with the owners' approval.

It has also been suggested that the requirement to pass a special resolution be changed from 3/4 of those attending the meeting and eligible to vote, to 3/4 of those voting. The argument is that, as currently structured, abstentions are effectively "no" votes. It is not proposed that this rule be changed. The test for passage of a special resolution is purposefully onerous. All owners will have an interest in any issue requiring a special resolution. If owners do not wish to participate in a vote, they can absent themselves from the meeting.

The Arbitration Process

Currently, the act allows disputes regarding strata corporation operations and the actions of owners to be referred to an arbitrator if court proceedings have not begun. The only qualification is that the arbitrator must have owned and occupied a strata unit for at least one year. The act requires the arbitrator to conduct a hearing, but does not specify detailed procedures that the arbitration must follow.

Concerns have been expressed about the current arbitration system. The minimal qualifications for arbitrators contained in the act do not ensure sufficient expertise and the lack of procedural requirements can confuse and intimidate potential parties to an arbitration.

Increased flexibility for strata corporations and reduced involvement of the Superintendent make it even more important that the arbitration system be effective and accessible.

It is, therefore, proposed that the act be amended to provide for an arbitration system similar to that which operates under the *Residential Tenancy Act*.

Under the proposed system, the actions of strata corporations, owners and developers would be subject to arbitration. An arbitrator would be appointed by agreement between the parties or, upon application of one party, by the Superintendent. The arbitrator's authority, the procedures and the rules governing decisions and appeals would be specified in the act and regulations.

The arbitration process would be facilitated through an administrative office as is currently done with residential tenancy disputes. The office would make available lists of arbitrators and ensure that the rules governing the arbitration process are available to all affected parties. Arbitration, rather than the courts, would be the primary dispute resolution mechanism under the act. Appeals to the courts would be restricted to questions of law or jurisdiction.

These changes should improve the accessibility and reliability of the arbitration process and ensure that the process is fair for all involved.

Rental Units

The right of individual owners to rent their condominium units often results in problems within the strata corporation. The majority of owners may oppose the rental of individual units on the grounds that tenants will not respect the common property to the same extent as owners and will not abide adequately by the rules of the strata corporation. On the other hand, individual owners may feel that they have the right to rent their property if they choose to do so and may, in fact, have purchased their condominium for that purpose.

Problems have arisen in the areas of rental limitations, tenant screening, rental surcharges and tenant responsibilities.

Amendments to the act were introduced in 1977 to address conflicts over condominium rentals. The 1977 amendments permit a strata corporation to limit the number of strata units that may be rented. As any rental limitation must be set out in a by-law, a special resolution is required to set the limitation. The text of any such by-law must be disclosed to prospective purchasers. The strata council may grant an exception to the limit and must have reasonable grounds for denying an exception in cases where an individual owner would suffer hardship as a result of not being able to rent.

The 1977 amendments appear to provide a fair and equitable balance between the interests of the corporation and the individual owner. It is not proposed that the legislative scheme created by the 1977 amendments be significantly altered. However, some improvements can be made.

It is proposed that the act and regulations be amended to:

- provide guidelines clarifying when the strata council is required to exempt an owner from the rental limit. This will assist both owners and strata corporations to better understand the extent of their respective rights;

- make the council's decision on an exemption appealable through the improved arbitration process. The involvement of an impartial arbitrator will help to ensure that exemptions are granted fairly;

- clarify that a rental limitation cannot be applied retroactively to units that owners are currently renting;

- clarify that the rental limitation scheme does not apply to bare land stratas and that bare land strata corporations cannot limit the rental of homes or "stratafied" land; and

- increase information on rental limitations so that owners and strata corporations understand their rights in this area and prospective purchasers understand the rental rules that apply to the particular condominium they are interested in buying. Pamphlets outlining the provisions in the act dealing with rental units should be made available to both current and prospective owners. Existing disclosure rules requiring developers to inform prospective purchasers about rental plans should be strengthened. Real estate agents should be required to reveal any rental restrictions to subsequent purchasers.

Rental Surcharges and Tenant Screening

Currently, the act is silent on the right of a strata corporation to supervise the rental of strata units on an ongoing basis. For example, no provision is made for strata corporations to charge "rental surcharges," screen tenants or set other ongoing rental requirements. In the absence of legislative provisions, many strata corporations have adopted these types of measures.

The ability of strata corporations to levy rental surcharges, screen tenants and otherwise administer rentals may be used to discourage or even eliminate rentals which would otherwise be permitted. In order to maintain the balance provided by the legislation governing rental limits, it is important that these provisions not be circumvented.

It is proposed that the act be amended to explicitly enable rental surcharges and the screening of tenants, and to regulate these activities.

A maximum rental surcharge would be set in the regulations.

This maximum would be high enough to reflect the costs to the strata corporation of any rental units, but low enough to avoid discouraging tenancies (for example, 5 per cent of the monthly levy).

Additionally, strata corporations that wish to screen tenants would be required to establish reasonable, written guidelines for accepting or rejecting prospective tenants.

These guidelines would be made available to all current and prospective owners. To ensure that the fair and reasonable criteria are met, both the guidelines and their application in specific circumstances could be appealed through arbitration.

Finally, the act would clarify that aside from duly set rental limits, strata corporations cannot erect barriers to the rental of condominium units.

This would put an end to unfair practices such as requiring owners to use particular property management companies to oversee rented units.

Tenant Responsibilities

Currently, owners are required to have tenants sign a form (Form D) that imposes the owners' duties under the by-laws on the tenants. Problems arise when a tenant does not sign a Form D and the strata corporation's only recourse if problems arise is to the owner. Also, current provisions in the act regarding tenants' rights are not as clear and straightforward as they should be.

It is proposed that Form D be eliminated and the act be amended to provide that a strata corporation's by-laws apply to tenants as they do to owners.

Owners would be required to inform prospective tenants accordingly and to provide a copy of the by-laws prior to rental. If the owner failed to make the necessary disclosure and the tenant breached the by-laws, the owner, not the tenant, would be liable to strata fines. Also, the strata council could terminate the tenancy if the breach of by-laws continued.

Operations of the Strata Corporation

There are other areas in which problems have arisen regarding the ongoing operations of strata corporations. These include common property issues, claims against common property, Form A provisions, budget rules and strata council duties.

Common Property Issues

The division of responsibility between individual owners and the strata corporation is not clearly defined in the act. Strata corporations are required, under sections 1 and 34 of the act, to maintain all property that is not part of a strata lot and, under section 116, to maintain those facilities capable of being used in connection with more than one strata lot.

In practice, these responsibilities can be contradictory. Problems arise with items that are located on common property but are used by only one strata lot such as mail boxes, storage lockers and roof decks and with items that are part of one strata lot but may affect the entire complex, such as some exterior windows, doors and skylights.

It is proposed that the act be clarified to firmly establish the principle that items located within individual strata lots are the individual owners' responsibility and those located outside strata lots are the strata corporation's responsibility.

The strata corporation would, therefore, be responsible for all facilities located on common property even if a facility was used by only one owner. An owner's responsibility would extend to areas such as exterior doors, balconies, patios, windows and skylights that are part of the strata lot. To provide for exceptional circumstances, the act would also enable the strata corporation to deem these types of property to be the responsibility of the corporation, by special resolution.

As a general rule, the strata corporation's responsibility would not extend to property designated for limited use on the strata plan.

The responsibility for the maintenance of limited common property would lie with those owners who are entitled to use the property. Expenses would be allocated between owners in a manner consistent with the general allocation of common expenses.

The division of responsibility between the strata corporation and the owners can be particularly problematic in bare land stratas. The act does not contain any special rules which apply to bare land stratas in this regard. Questions have arisen as to the degree to which the strata corporation has authority over the type of structures erected on a strata lot or over exterior alterations to existing structures. Questions have also arisen as to the degree to which the strata corporation can extend its control over the use of individual strata lots by means of by-laws.

It is proposed that the act be amended to clarify the line between strata corporations' and owners' responsibilities in bare land stratas in the same manner as proposed above for other strata complexes.

The act would clarify that the owner is responsible for property and buildings located within the strata lot and the strata corporation is responsible for common property located outside of the strata lots.

It would also provide that the strata corporation can, if it desires, establish general rules governing such things as architectural standards or strata lot use through the by-law process.

In such a case, the corporation's actions would be open to arbitration to ensure that they were not oppressive. Also, prospective bare land strata purchasers would be made aware of any building or use restrictions through improved disclosure rules which are discussed in greater detail below.

Claims Against Common Property

Currently, sections 75 and 76 of the act provide for the circumstance in which a builder's lien is filed against strata lots that have been purchased from a developer. In this instance, the owner of any single strata lot can discharge the lien from that lot by paying to the court an amount which has been held back from the purchase price. The court holds the money in trust until the dispute is resolved. This procedure enables an owner to clear the title of his lot before the lien claim is settled.

The act does not extend this type of protection to subsequent purchasers or to claims other than builders' liens. If a claim, such as a builder's lien, is made against the common property of an established strata complex, it is registered against each strata lot. In order to clear the title of his lot, an individual owner would have to pay the full amount of the claim into court. This is not fair to individual owners who may require clear title in order to sell their strata lots.

It is proposed that the act be amended to enable an owner to clear title to his strata lot by paying into court his proportionate share of any charge outstanding against the common property.

An owner's share would be determined from his unit entitlement. This would ensure that the owner's share is available for payment of the claim while, at the same time, protecting a subsequent purchaser from prior claims against the strata lot.

Form A Provisions

Currently, under section 38 of the act, when a condominium owner decides to sell a unit, the strata corporation certifies (a Form A certificate) that the owner has no outstanding debts to the corporation. A Form A certificate is required to assure a prospective purchaser that no previous obligations to the strata corporation will be assumed upon purchase of the strata lot.

The act does not provide for the possibility that the condominium owner and the corporation may disagree on whether there is money owing. The owner may be forced to pay the disputed amount in order to obtain a Form A certificate. This gives the strata corporation an unfair bargaining advantage over condominium owners.

It is proposed that the act be amended to allow owners to pay the disputed amount into court in trust.

Upon payment into court, the strata corporation would be required to issue a Form A certificate, thus allowing the sale to proceed prior to settlement of the dispute over monies owed. The dispute could be settled through the normal arbitration process and the new owner would not be subject to any charge regarding the disputed amount.

Budget Rules

Section 35 of the act currently requires that the strata corporation establish two funds; an administrative fund for ongoing expenses and a contingency fund for extraordinary expenses. Fund amounts must be raised in accordance with the by-laws of the corporation. The standard by-laws set out in section 128 require that a budget be prepared annually and that condominium owners pay monthly levies based on this budget.

Additionally, to ensure that owners have adequate information regarding the management of strata corporation funds, section 122 requires the strata council to maintain adequate accounting records and report on monies received and expended to the annual general meeting.

While the structure of the budgetary rules is basically sound, the act could be clarified to ensure that the budget process operates in a more efficient and accountable manner.

It is proposed that amendments be made to:

- clarify that both the budget and the contingency fund amount must be approved by the owners at the annual general meeting;
- provide the strata corporation the flexibility to deal with instances of budgetary over-expenditure;

- specify that the administrative and contingency funds must be kept in separate accounts and accounted for separately;
- clarify that the responsibility for the ongoing administration of both funds lies with the strata council; and
- specify that a schedule of any payments to council members must be included in the expenditure report to the annual general meeting.

Duties of the Strata Council

While the act sets out various specific duties of the strata council, it does not include any general standard against which the actions of council members can be assessed. That council members should act in the best interests of the strata corporation is implied, but not explicitly stated.

It is proposed that the act be amended to require that strata council members act honestly, in good faith and in the best interests of the strata corporation, and that members exercise the care, diligence and skill of a reasonably prudent person.

This will not change the council's role in administering strata corporation affairs, but will clarify what is required of council members. Existing limitations on the liability of council members for good faith actions will continue to apply.

Duties of Owner/Developers

The *Condominium Act*, along with related sections of the *Real Estate Act*, governs the development of strata title units. The general intent of the legislation is to minimize barriers to development while, at the same time, ensuring reasonable protection to purchasers of strata units.

There are a number of areas in which the rules governing the activities of strata developers could be improved to better achieve this intent. These include the registration of strata plans, the sale of strata units and the transfer of developers' responsibilities to the strata council.

Registration of Strata Plans

The Union of British Columbia Municipalities has raised a registration issue which relates to municipal control of strata developments. Currently, municipal control over new strata development lies in their authority over zoning and the issuance of building permits. While municipal approval is required for the registration of strata plans that convert existing apartment complexes into strata units, new developments do not require municipal approval of strata plans registered at the Land Title Office.

In most cases strata developments conform to the applicable municipal by-laws and no problems result. However, instances have arisen in which, for example, a developer permitted by the municipality to build a single family dwelling registers a strata plan for a four-plex. As the Land Title Office does not check strata plans for contravention of municipal requirements, the strata plan can be duly registered and the units sold long before the municipality gains knowledge of the infraction. In this instance, the only municipal recourse is through costly court proceedings.

It is proposed that a strata developer be required to obtain, from the municipality, a form that indicates that the planned development conforms to zoning by-laws.

This form could be issued at the time that the building permit is reviewed, or at any other time prior to strata plan registration.

In order to register the strata plan with the land registry, the conformance form would have to accompany the strata plan. This would ensure that municipal requirements are not circumvented in the manner described above. It would also be less costly for the developer than requiring additional municipal approval at the registration stage.

Sale of Strata Units

Proposed amendments to the *Real Estate Act* which eliminate prospectus requirements and strengthen disclosure statement rules will both reduce developers' costs and increase pertinent information available to prospective condominium purchasers.

An area in which the adequacy of purchaser information has been particularly problematic is that of bare land strata sales. Because it is unlikely that bare land strata purchasers will be familiar with this method of subdivision development, it is

important that the information available to them be comprehensive.

It is proposed that developers be required to ensure that prospective purchasers are adequately informed not only about the organization of the "stratafied" land, but also about the rights and duties that would apply to them as owners. Additionally, real estate agents would be required to supply the same information to subsequent purchasers.

A second issue respecting the sale of strata units relates to the deposit trust rules of the *Real Estate Act*. Currently, section 50 of the *Real Estate Act* requires developers to hold deposits made toward the purchase of strata units in trust. Developers are entitled to the interest on the deposits from the sale of the first one-third of the strata units.

It has been argued that the interest entitlement is not an effective means of reducing developers' borrowing costs. Additionally, it is inconsistent with rules governing other trust accounts in the *Real Estate Act*.

It is therefore proposed that the interest entitlement be eliminated and that developers be allowed to obtain insurance (for example, performance bonds) against purchasers' deposits rather than holding those deposits in trust. Rules governing the type of insurance and ensuring payout of purchasers' funds in the event that the development does not proceed as agreed upon, would be specified in the regulations.

This would assist in reducing borrowing costs by freeing up purchasers' deposits for developers' use, while also ensuring adequate protection of purchasers' funds.

Transfer of Responsibilities to the Strata Council

Currently, under section 118 of the act, the developer exercises the powers of the strata corporation until a council is elected by the owners. The council must be elected within nine months after the strata plan is registered or upon sale of 60 per cent of the strata lots. While acting as council, the developer holds strata fees in trust for the payment of maintenance expenses, may sell portions of the common property and may enter into contracts for the management of strata affairs.

The act does not recognize the likely disparity in expertise between the developer, who is likely to be a sophisticated business person, and the first strata council, which may be composed largely of people with little experience in managing condominiums. This places the council at a disadvantage in judging the performance of the developer and guarding against the misappropriation of funds.

It is proposed that the act be amended to better enable strata councils to monitor the behaviour of developers.

It is proposed that amendments be made to:

- require developers to keep strata fees in a trust account, pay expenses from this account and submit an audited reconciliation of the account to the first annual general meeting of the strata corporation;
- require the developer to submit an independent appraisal of any common property sold prior to the election of the council;
- require that all management contracts entered into by the developer terminate not later than the second annual general meeting of the strata corporation; and
- require the developer to supply the council with all relevant financial records and any construction information requested by council.

Strata Plan Reorganization

Section 57 of the act permits limited amendment of the strata plan after it is registered. Common property and strata lots may be divided or consolidated and a limited common property designation may be removed. Divisions and consolidations must be approved by special resolution of the strata corporation. Changes to limited common property require unanimous approval of all owners.

Problems have arisen that indicate that the current rules do not provide sufficient flexibility for strata plan reorganizations. The rules do not anticipate all types of potential reorganization. Additionally, where the reorganization does not affect the strata corporation, owners should be able to proceed independently or with other relevant owners without involving the strata corporation.

It is proposed that the act be amended to:

- allow the amalgamation of common property and strata lots on unanimous consent of the strata owners;

- allow portions of strata lots to be dealt with separately. For example, it would be possible to consolidate a portion of one strata lot with another strata lot;

- allow the subdivision or consolidation of strata lots without the approval of the strata corporation if the council certifies that the reorganization does not affect the strata corporation. The special resolution and unanimous consent requirements would continue to apply in cases where the strata corporation is affected by the reorganization;

- allow the re-subdivision of bare land strata property previously subdivided by the strata plan. At present, such a reorganization would require dissolution of the strata corporation and the creation of a new strata corporation; and

- provide a standard procedure for cancelling of all strata plans. The procedure would require filing a unanimous resolution with the Land Title Office in a similar manner as currently applies to bare land stratas. Additionally, it would require all strata corporations, including bare land stratas, to be wound-up upon cancellation of the plan in a manner analogous to the winding-up requirements of the *Company Act*.

Apartment Corporations

There are a number of cooperatively owned apartment buildings in the province which do not fall under the *Condominium Act* but, rather, operate as companies under provisions of the *Company Act*. These apartments were built prior to the enactment of condominium legislation and were organized along corporate lines.

Recently, a number of problems have arisen with the operations of these apartments. Housing market conditions have resulted in the rapid escalation of the value of these properties and this has led to situations in which the rights of individual owners have been open to abuse. The question has arisen as to whether the *Company Act* provides an appropriate means of corporate organization for these apartment buildings.

Options for dealing with this situation include:

- requiring these apartments to convert to condominiums so that they would be covered by the *Condominium Act;*
- facilitating voluntary conversion to condominiums; and
- selectively applying sections of the *Condominium Act* which would provide more effective protection of owners' rights.

In recognition of the technical and legal complexity of this issue, it has been referred to the Law Reform Commission of British Columbia for consideration and advice.

Conclusion

The changes proposed in this paper are intended to update and modernize provisions of the *Condominium Act*. The flexibility of strata corporations to manage their own affairs would be increased. Non-essential barriers to condominium development and to strata corporation activities would be removed. At the same time, balance would be maintained by ensuring better protection of the rights of individual strata owners under an improved arbitration system. The relationship between condominium developers and subsequent owners would also be better balanced by increasing the flow of information between these two parties. Finally, clarification of the act and new disclosure and public information rules would increase peoples' awareness of their rights and responsibilities under the act.

October 1990

Recycled Paper

Queen's Printer for British Columbia©
Victoria, 1990

MR 2140